

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 BRITTNEY WITHERSPOON, :
 Plaintiff, :
 :
 -against- :
 :
 SIA PARTNERS U.S., INC. et al., :
 :
 Defendants. :
 :
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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 8/10/2021

21-CV-5555 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

Plaintiff filed her Complaint in this action on June 25, 2021, (Doc. 1), and served Defendant Daniel Connor with the Complaint on July 12, 2021, (Doc. 5). On August 5, 2021, Plaintiff filed a First Amended Complaint. (Doc. 6.)

“A party may amend its [complaint] once as a matter of course within 21 days after serving it.” Fed. R. Civ. P. 15(a)(1)(A). “In all other cases, a party may amend its [complaint] only with the opposing party's written consent or the court's leave.” Fed. R. Civ. P. 15(a)(2). More than 21 days have lapsed between the time that Plaintiff served her Complaint and the time she filed her First Amended Complaint. The First Amended Complaint does not contain an accompanying motion for leave or indicate that Defendants consent to the filing. Accordingly, it is hereby:

ORDERED that Plaintiff's First Amended Complaint, (Doc. 6), is untimely and improperly filed.

IT IS FURTHER ORDERED that if Plaintiff intends to file an amended complaint, she must either file a motion for leave or indicate that Defendants have provided written consent, as contemplated by Rule 15(a)(2).

IT IS FURTHER ORDERED that, to the extent Plaintiff intends to file a motion for leave to file an amended complaint, or make such a filing on consent, she is directed not to move for default judgment against Defendant Connor, whose answer is now overdue. I note that Plaintiff has failed to file an affidavit of service for Defendants Sia Partners U.S., Inc. and Sia Partners, such that Plaintiff cannot move for default judgment against those Defendants at this time. Failure to comply with Federal Rule of Civil Procedure 4(m) risks dismissal of this action against those Defendants.

SO ORDERED.

Dated: August 10, 2021
New York, New York


Vernon S. Broderick
VERNON S. BRODERICK
United States District Judge